



[8320-01]

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900-AO42

Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing Servicemembers' Group Life Insurance (SGLI), Family SGLI, SGLI Traumatic Injury Protection, and Veterans' Group Life Insurance (all hereafter referred to as SGLI). The purpose is to acknowledge and clarify what is implicit in the law: that VA, which has the responsibility under the law to oversee the SGLI program and ensure its proper operation, also has the right to full access to records held by the insurer or on behalf of the insurer from whom VA has purchased a policy. These records include all of the insurer's records related to the operation and administration of the SGLI programs necessary to protect the legal and financial rights of the Government and of the persons affected by the activities of the agency and its agents.

DATES: Comments must be received by VA on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand delivery to Director, Regulation

Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026.

Comments should indicate that they are submitted in response to "RIN 2900-AO42 Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842-2000, ext. 2905. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 1966(a) of title 38, United States Code, authorizes the Secretary of Veterans Affairs (Secretary) to purchase one or more group life insurance policies from one or more life insurance companies for the purposes of providing the benefits specified in 38 U.S.C. 1965–1980A, namely the Servicemembers' Group Life Insurance (SGLI), Family SGLI, SGLI Traumatic Injury Protection, and Veterans' Group Life Insurance programs (all hereafter referred to as SGLI). Under 38 U.S.C. 1966 and the terms of the policy purchased by VA pursuant to section 1966(a), the insurer has the responsibility

of administering the SGLI programs on a day-to-day basis with VA retaining oversight responsibility to ensure that the SGLI programs are managed in an effective and efficient manner that allows the Secretary to fulfill his responsibilities under the law.

Section 3101 of title 44, United States Code, requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to "protect the legal and financial rights of the Government and of persons directly affected by the agency's activities." The records that are created and maintained by or on behalf of the insurer, reinsurer(s), and their successors (jointly referred to hereafter as "insurer") under the SGLI policy are Federal records created because of the contractual relationship between VA and the insurer under 38 U.S.C. 1966. Federal records are defined in 44 U.S.C. 3301.

In order for VA to meet its responsibilities under sections 1966 and 3101, VA proposes to add § 9.21 to 38 CFR part 9, to clarify that VA has the right to complete and unrestricted access to the records of any insurer with respect to the policy and related benefit programs or services that are derived from the policy. This access includes access to any records relating to the operation and administration of the benefit programs derived from the policy and records related to the organization, functions, policies, decisions, procedures, and essential transactions of the insurer. VA's access to records includes access to records containing financial information of the insurer as these records are

considered part of the records that encompass the essential transactions performed by the insurer in the operation of the SGLI programs. VA's access to these records is required to ensure that the legal and financial rights of the Government and the persons affected by activities of the insurer are protected. VA's access to records shall also include access to records of individuals insured under the policy or utilizing other related program benefits and services or who may be entitled to benefits derived through the SGLI programs, including personally identifiable information concerning such individuals and their beneficiaries. Implicit in the law and policy is that the insurer will provide this access in cooperation with VA to improve the delivery of insurance products and benefits under the law for servicemembers, veterans, their dependents, and eligible beneficiaries. This proposed rule would provide clarity and assurance that there are no barriers or questions regarding the extent of VA's unfettered access to appropriate records related to the policy.

Additionally, we note that the insurer must comply with the provisions of the Privacy Act, 5 U.S.C. 552a, with regard to Federal records held in a Privacy Act system of records on VA's behalf. The Federal records held by the insurer are protected by the Privacy Act when VA provides by a contract for the operation by or on its behalf of a system of records to accomplish a VA function. See 5 U.S.C. 552a(m). The operation of the SGLI insurance programs is a VA function authorized to be performed by the insurer under section 1966. VA has promulgated a system of records notice for SGLI files, "Veterans and Uniformed

Services Personnel Programs of U.S. Government Life Insurance—VA” (36VA29), published at 75 FR 65405, October 22, 2010.

We also note that the provisions of 38 U.S.C. 5701, Confidential nature of claims, and 38 U.S.C. 7332, Confidentiality of certain medical records, are applicable to records held by the insurer. Furthermore, the provisions of 38 U.S.C. 5725 apply to the insurer and the policy authorized by section 1966. The Federal records held by the insurer, depending on content, may meet the definition of “VA sensitive data” in 38 U.S.C. 5727(23). The requirements of 38 U.S.C. 5725 regarding a liquidated damages clause apply to the policy purchased by VA under 38 U.S.C. 1966.

The proposed rule would also clarify VA’s authority to require the insurer to provide original records to the Secretary or a representative of the Secretary at the Secretary’s direction. The records shall be available in either hard copy or readable electronic media. At the Secretary’s option, copies may be provided in lieu of originals where allowed by the Federal Records Act, 44 U.S.C. chapter 31. Finally, the proposed rule would include an authority citation to 5 U.S.C. 552, 552a; 38 U.S.C. 1966, 5701, 5725, 5727, 7332; and 44 U.S.C. 3101, 3301.

This proposed rule would apply to the insurer as of the effective date of the final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before

issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions that would constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3521).

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" that requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and the insurer and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C.

605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on September 12, 2013, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: September 17, 2013.

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

2. Add § 9.21 to read as follows:

§ 9.21 VA's access to records maintained by the insurer, reinsurer(s), and their successors.

(a) In order to perform oversight responsibilities designed to protect the legal and financial rights of the Government and persons affected by the activities of the Department of Veterans Affairs and its agents and to ensure that the policy and the related program benefits and services are managed effectively and efficiently as required by law, the Secretary of Veterans Affairs shall have complete and unrestricted access to the records of any insurer, reinsurer(s), and their successors with respect to the policy and related benefit programs or services that are derived from the policy. This access includes access to:

- (1) Any records relating to the operation and administration of benefit programs derived from the policy, which are considered to be Federal records created under the policy;

(2) Records related to the organization, functions, policies, decisions, procedures, and essential transactions, including financial information, of the insurer, reinsurer(s), and their successors; and

(3) Records of individuals insured under the policy or utilizing other related program benefits and services or who may be entitled to benefits derived through the Servicemembers' and Veterans' Group Life Insurance programs, including personally identifiable information concerning such individuals and their beneficiaries.

(b) Complete access to these records shall include the right to have the originals of such records sent to the Secretary of Veterans Affairs or a representative of the Secretary at the Secretary's direction. The records shall be available in either hard copy or readable electronic media. At the Secretary's option, copies may be provided in lieu of originals where allowed by the Federal Records Act, 44 U.S.C. chapter 31.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 1966, 5701, 5725, 5727, 7332; 44 U.S.C. 3101, 3301)

[FR Doc. 2013-22977 Filed 09/20/2013 at 8:45 am; Publication Date: 09/23/2013]